

**Practitioner's Docket No. 2731/103**

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Mason

Atty Dkt: 2731/103

Serial No: TBA

Art Unit: TBA

Date Filed:            Herewith

Examiner: TBA

# Invention: Method for Graftless Spinal Fusion

## Commissioner for Patents

**P.O. Box 1450**

**Alexandria, VA 22313-1450**

## INFORMATION DISCLOSURE STATEMENT

**CERTIFICATE UNDER 37 C.F.R. § 1.8(a) and 1.10\***

(When using Express Mail, the Express Mail label number is **mandatory**;  
Express Mail certification is optional.)

I hereby certify that this correspondence is, on the date shown below, being:

## MAILING

deposited with the United States Postal Service in an envelope addressed to the Commissioner for Patents  
P.O. Box 1450, Alexandria, VA 22313-1450

■ **37 C.F.R. § 1.8(a)**

**37 C.F.R. § 1.10\***

- with sufficient postage as first class mail.

☒ as "Express Mail Post Office to Addressee"  
Mailing Label No. EV33308217845 (mandatory)

## TRANSMISSION

☐ transmitted by facsimile to the Patent and Trademark Office.

Date: January 29, 2004

Signature

John L. Conway

(type or print name of person certifying)

**NOTE:** "An information disclosure statement shall be considered by the Office if filed by the applicant within any one of the following time periods:

- (1) Within three months of the filing date of a national application other than a continued prosecution application under § 1.53(d);
- (2) Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application;
- (3) Before the mailing date of a first Office action on the merits; or
- (4) Before the mailing date of a first Office action after the filing of a request for continued examination under § 1.114."

37 C.F.R. § 1.97(b).

**NOTE:** "Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section." 37 C.F.R. § 1.56(a).

"Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) each inventor named in the application;
- (2) each attorney or agent who prepares or prosecutes the application; and
- (3) every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application." 37 C.F.R. § 1.56(c).

**NOTE:** The "duty as described in § 1.56 will be met so long as the information in question was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98 before issuance of the patent." Notice of January 9, 1992, 1135 O. G. 13 -25 at 17.

**WARNING:** "No information disclosure statement maybe filed in a provisional application." 37 C.F.R. § 1.51(d).

### **List of Sections Forming Part of This Information Disclosure Statement**

The following sections are being submitted for this Information Disclosure Statement:

(check sections forming a part of this statement: discard *unused* sections and number pages consecutively)

1. ☒ Preliminary Statements
2. ☒ FORMS PTO/SB/08A and 08B (formerly FORM PTO-1449)
3. ☐ Statement as to Information Not Found in Patents or Publications
4. ☒ Identification of Prior Application in Which Listed Information Was Already Cited and for Which No Copies Are Submitted or Need Be Submitted
5. ☐ Cumulative Patents or Publications
6. ☒ Copies of Listed Information Items Accompanying This Statement
7. ☐ Concise Explanation of Non-English Language Listed Information Items
  - 7A. ☐ EPO Search Report
  - 7B. ☐ English Language Version of EPO Search Report
8. ☐ Translation(s) of Non-English Language Documents
9. ☐ Concise Explanation of English Language Listed Information Items (Optional)
10. ☒ Identification of Person(s) Making This Information Disclosure Statement

**NOTE:** "Once the minimum requirements are met the examiner has an obligation to consider the information." Notice of April 20, 1992 (1138 O.G. 37-41, 37).

**Section 1. Preliminary Statements**

Applicants submit herewith patents, publications or other information, of which they are aware that they believe may be material to the examination of this application, and in respect of which, there may be a duty to disclose.

The filing of this information disclosure statement shall not be construed as a representation that a search has been made (37 C.F.R. § 1.97(g)), an admission that the information cited is, or is considered to be, material to patentability, or that no other material information exists.

The filing of this information disclosure statement shall not be construed as an admission against interest in any manner. Notice of January 9, 1992, 1135 O.G. 13-25, at 25.

(Information Disclosure Statement—Section 1. Preliminary Statements [6-1]--)

**SECTION 2. FORMS PTO/SB/08A and 08B (formerly Form PTO-1449)****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Mason Atty Dkt: 2731/103  
Serial No: TBA Art Unit: TBA  
Date Filed: Herewith Examiner: TBA  
Invention: Method for Graftless Spinal Fusion

**LIST OF PATENTS AND PUBLICATIONS FOR APPLICANTS'  
INFORMATION DISCLOSURE STATEMENT****United States Patents**

Examiner Initials	Reference Number	Document Number	Issue Date	Inventor	Class/Subclass
_____	AA	4,714,469	Dec. 22, 1987	Kenna	623/17
_____	AB	5,112,354	May 12, 1992	Sires	623/16
_____	AC	5,344,654	Sept. 6, 1994	Rueger, et al.	424/423
_____	AD	5,609,635	Mar. 11, 1997	Michelson	623/17
_____	AE	5,645,591	July 8, 1997	Kuberasampath, et al.	623/16
_____	AF	5,865,848	Feb. 2, 1999	Baker	623/17
_____	AG	5,888,222	Mar. 30, 1999	Coates, et al.	623/17
_____	AH	5,984,967	Nov. 16, 1999	Zdeblick, et al.	623/17
_____	AI	6,039,762	Mar. 21, 2000	McKay	623/17
_____	AJ	6,096,080	Aug. 1, 2000	Nicholson	623/17
_____	AK	6,113,638	Sept. 5, 2000	Williams, et al.	623/17
_____	AL	6,210,412 B1	Apr. 3, 2001	Michleson	606/61
_____	AM	6,241,733 B1	June 5, 2001	Nicholson, et al.	606/84
_____	AN	6,241,769 B1	June 5, 2001	Nicholson, et al.	623/17.11
_____	AO	6,241,771 B1	June 5, 2001	Gresser, et al.	623/17.16
_____	AP	6,261,586 B1	July 17, 2001	McKay	424/423
_____	AQ	6,264,656 B1	July 24, 2001	Michelson	606/61
_____	AR	6,294,187 B1	Sept. 25, 2001	Boyce, et al.	424/422
_____	AS	6,296,667 B1	Oct. 2, 2001	Johnson, et al.	623/23.61
_____	AZ	6,419,704 B1	Jul. 16, 2002	Ferree	
_____	BA	4,714,469	Dec. 22, 1987	Kenna	
_____	BB	6,039,762	Mar. 21, 2000	McKay	

_____	BC	4,946,378	Aug. 7, 1990	Hirayama et al.
_____	BD	6,241,769 B1	Jun. 5, 2001	Nicholson et al.
_____	BE	6,241,770 B1	Jun. 5, 2001	Michelson
_____	BF	4,904,261	Feb. 27, 1990	Dove et al.

### Foreign Patent Documents

Examiner Initials	Reference Number	Document Number	Issue Date	Country
_____	AT	EP 0 317 972	31 May 1989	Europe
_____	AU	DE 39 11 610A	18 Oct. 1990	Germany
_____	AV	WO 90/11740	18 Oct. 1990	World
_____	AW	EP 0 421 485A	10 Apr. 1991	Europe
_____	AX	WO 93 22990A	25 Nov. 1993	World

### Other Documents

Examiner Initials	Reference Number	Author	Title of Article, Title of Item, Date, Page(s), Volume- Issue Number(s)
_____	AY	International Search Report, International Application No. PCT/US 01/31821, Mailed May 17, 2002	

Examiner Signature: \_\_\_\_\_

Date Considered: \_\_\_\_\_

NOTE FOR EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance AND not considered. Include copy of this form with next communication to applicant.

#### **Section 4. Identification of Prior Application in Which Listed Information Was Already Cited**

**NOTE:** *"A copy of any patent, publication or other information listed in an information disclosure statement is not required to be provided if it was previously cited by or submitted to the Office in a prior application, provided that the prior application is properly identified in the statement and relied upon for an earlier filing date under 35 U.S.C. 120." 37 C.F.R. § 1.98(d).*

**WARNING:** *"This exception to the requirement for copies of information does not apply to information which was cited in an international application under the Patent Cooperation Treaty." Notice of April 20, 1992 (1138 O.G. 37-41, 38)*

**WARNING:** *"Information which is cited or submitted to the Office in the parent application of a file wrapper continuing application under 37 C.F.R. 1.62 will be part of the file before the examiner and need not be resubmitted in the continuing application. Likewise, the examiner will consider information cited or submitted to the Office in a parent application when examining a continuing application and thus this information need not be resubmitted unless applicant desires the information to be printed on the patent." Notice of April 20, 1992 (1138 O.G. 37-41, 37)*

**WARNING:** *While a copy of a non-English language item of information need not be submitted, if it was previously submitted to, or cited by, the Office in a prior application, provided it is properly identified in this statement and this application relies on that earlier filing date under 35 U.S.C. 120, nevertheless, the requirement in § 1.98(a)(3) for a concise explanation of non-English language information would not be satisfied by a statement that a reference was cited in the prosecution of a parent application. The concise explanation must explain the relevance, as presently understood by the person designated in § 1.56(c) most knowledgeable about the content of the information. Notice of January 9, 1992, 1135 O.G. 13-25, at 20.*

*(complete the following, if applicable)*

This application relies, under 35 U.S.C. 120, on the earlier filing date of U.S. application no. 09/976,685, entitled "Graftless Spinal Fusion Device," Attorney's docket 2731/101, formerly Mason 5883,

All references were submitted to, and /or cited by, the Office in the prior application and, therefore, are not required to be provided in this application:

(Information Disclosure Statement-Section 4. Identification of Prior Application in Which Listed Information Was Already Submitted and for Which No Copies Are Submitted or Need Be Submitted Statement [6-1]-)

## **Section 6. Copies of Listed Information Items Accompanying This Statement**

*NOTE: 37 C.F.R. § 198(a)(2) requires that any information disclosure statement filed under § 1.97 shall include:*

*"A legible copy of:*

- (i) Each U.S. patent application publication and U.S. and foreign patent;*
- (ii) Each publication or that portion which caused it to be listed,*
- (iii) For each cited pending U.S. application, the application specification including the claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion. . .*

Legible copies of all items listed in Forms PTO/SB/08A and 08B (formerly Form PTO-1449) accompany this information statement.

*(complete the following, if applicable)*

Exception(s) to above:

US patent application publications and U.S. patents.

Note: the Patent and Trademark Office has waived the requirement under 37 CFR 1.98 (a)(2)(i) for submitting a copy of each cited U.S. patent and each U.S. patent application publication for all U.S. national patent applications filed after June 30, 2003

Items in prior application, from which an earlier filing date is claimed for this application, as identified in Section 4.



## Section 10. Identification of Person(s) Making This Information Disclosure Statement

The person making this statement is

(check each applicable item)

- (a) ☐ the inventor(s) who signs below

\_\_\_\_\_  
SIGNATURE OF INVENTOR

\_\_\_\_\_  
(type or print name of inventor who is signing)

- (b) ☐ an individual associated with the filing and prosecution of this application (37 C.F.R. § 1.56(c))

\_\_\_\_\_  
SIGNATURE OF INVENTOR

\_\_\_\_\_  
(type or print name of inventor who is signing)

- (c) ☒ the practitioner who signs below on the basis of the information:

(check each applicable item)

- ☐ supplied by the inventor(s).  
☐ supplied by an individual associated with the filing and prosecution of this application. (37 C.F.R. § 1.56(c))  
☒ in the practitioner's file.

Reg. No.: 48,241

Tel. No.: 617/443-9292

Customer No.: 002101

  
\_\_\_\_\_  
SIGNATURE OF PRACTITIONER

\_\_\_\_\_  
John L. Conway  
(type or print name of person certifying)  
Bromberg & Sunstein LLP  
125 Summer Street  
Boston, MA 02110-1618

(Information Disclosure Statement-Section 10. Identification of Person(s) Making This Information Disclosure Statement [6-1]-

02731/00103 291615.1